UNITED
NATIONS

TD

United Nations Conference
on Trade and Development

Distr.
GENERAL

TD/B/41(2)/2
TD/B/RBP/103
16 January 1995

Original: ENGLISH

Report of the Intergovernmental Group of Experts on Restrictive Business Practices on its thirteenth session

held at the Palais des Nations, Geneva,
from 24 to 28 October 1994

GE.95-50193 (E)

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INTRODUCTION

1. The Intergovernmental Group of Experts on Restrictive Business Practices held its thirteenth session at the Palais des Nations, Geneva, from 24 to 28 October 1994.

2. In the course of the session, the Group held six plenary meetings and several informal meetings.

Opening statements

3. The **Officer-in-Charge of UNCTAD** noted that, since the adoption of the Set of Principles and Rules, there had been increased economic globalization and interdependence among countries, widespread adoption of market-oriented economic reforms and of competition laws, greater convergence in competition regimes, and the adoption of the Uruguay Round Agreements. While the Agreements as a whole were relevant to competition, several of their provisions dealt specifically with competition questions. This was particularly the case with the Agreements on safeguards, services (especially telecommunications), intellectual property rights, and investment measures where there was a commitment to consider within five years whether the existing agreement should be complemented with provisions on competition policy, and therefore to start examining such issues at the multilateral level. Since the Uruguay Round Agreements did not, however, address all the relevant issues, it was also necessary to update and build upon the principles contained in the Set so as to better reflect the new global conditions. In particular, there was a need to examine how to control RBPs affecting global trade and competition, to ease tensions arising in this area from Governments' enforcement efforts, and to reconcile possible conflicts between competition and trade policies.

4. He recalled that the Trade and Development Board had agreed that UNCTAD should undertake policy analysis and build a consensus on new issues on the trade agenda, including competition policy, and an executive session of the Board would be examining their likely implications for developing countries. The Intergovernmental Group could contribute to this exercise, in preparing for the 1995 Review Conference, by analysing the Uruguay Round's implications for competition policy, as well as by assessing the implementation of the Set and making proposals thereon to the Conference. This might lead the Review Conference to initiate work on identifying universal principles of competition policy, complementing the principles contained in the Set; on strengthening consultations and cooperation mechanisms; and on identifying how best to mobilize resources for UNCTAD's technical cooperation activities.

5. The **Officer-in-Charge of the International Trade Division** stated that the extensive experience of the Intergovernmental Group and its important contribution to the establishment of competition regimes could now serve as a basis for assessing how international cooperation on competition policy could be further strengthened in the light of recent changes in the global economic environment. He emphasized the need for further efforts to protect the vitality of competition at the global level in order to safeguard economic efficiency and consumer welfare, to facilitate access to international markets by producers and consumers from all countries, particularly the weaker ones,

and to minimize tensions among Governments in this area. The attainment of such objectives would be facilitated by the existence of internationally agreed norms.

6. In reviewing the work of the Intergovernmental Group in the areas of the model law on competition, technical cooperation and consultations on RBP issues, he stated that the secretariat would be unable to respond to most of the requests for technical cooperation received from Governments unless substantial additional resources could be mobilized.

7. Finally, he invited member States to initiate discussions on the agenda for the fourteenth session of the Intergovernmental Group and on the preparatory process for the 1995 Review Conference. He also called for guidance on how UNCTAD might intensify cooperation with other international organizations which were active in the field of competition policy.

Chapter I

STUDIES RELATED TO THE PROVISIONS OF THE SET AND CONSULTATIONS ON RESTRICTIVE BUSINESS PRACTICES
(Agenda item 3)

THE MODEL LAW OR LAWS FOR THE CONTROL OF RESTRICTIVE BUSINESS PRACTICES, AND THE HANDBOOK ON RESTRICTIVE BUSINESS PRACTICES COMPETITION LEGISLATION
(Agenda item 4)

WORK PROGRAMME ON RESTRICTIVE BUSINESS PRACTICES INCLUDING TECHNICAL ASSISTANCE, ADVISORY AND TRAINING PROGRAMMES ON RESTRICTIVE BUSINESS PRACTICES, AND PREPARATION OF THE THIRD REVIEW CONFERENCE
(Agenda item 5)

8. The representative of **Poland** said that the documents prepared by the UNCTAD secretariat were extremely useful as they provided information concerning other countries implementing competition policy. As already stated at previous sessions of the Intergovernmental Group, Poland was pursuing a dynamic policy of market reforms, including privatization. The Antimonopoly Office was now working on, inter alia, deregulation of such sectors as energy and telecommunications. For this purpose, the Office was interested in the experience of other countries with regulatory bodies in this area. Poland was also in the process of preparing amendments to its competition legislation, particularly the area of mergers and acquisitions, in order to harmonize its competition legislation, and in particular its manner of enforcement, with that of the European Union. Poland was very keen to learn from the experience of other countries in this sphere, in order not to repeat any mistakes that might have been made.

9. The representative of **Slovakia** said that, after some years of experience and on the basis of a broad comparison of modern antitrust legislation worldwide, including the Model Law prepared by UNCTAD, his country had adopted new legislation on 1 August 1994. Although the new law recognized that competition was not a goal in itself, it sought to promote competition since it contributed to the economic efficiency. Competition also had as its ultimate goal consumer welfare and the control of abuse of dominant power. After outlining the main characteristics of the new legislation, he emphasized that the law contained special provisions which would enable the Antimonopoly Office to redress actions of State and local administrative bodies that had an adverse impact on competition. In parallel, the Antimonopoly Office was also involved in advising the Government in the process of privatization undertaken in his country.

10. The representative of **Romania**, describing the measures taken in her country to achieve a transition to market economy, stated that, in order to protect through a legal framework free competition in the economy, a draft law on protection of competition had been prepared, which was modelled on the legislation of countries that had a tradition in market economy, in particular the European Union. In this regard, UNCTAD's Handbook on RBP legislation and the Model Law had been of great support. The recommendations contained in the Set of Principles and Rules had also been taken into consideration. After

describing the main features of the draft legislation, which was now being considered by the relevant parliamentary commission, she said that the proposed sanctions were high as they aimed at discouraging the anti-competitive behaviour of both the private and the State sector. Meanwhile, under the existing legal provisions, a Directorate-General for Policy and Protection of Competition had been established. Finally, she expressed the gratitude of her country to the international organizations and national competition authorities of countries that had provided technical cooperation in training the officials who would be responsible for enforcing the new law.

11. The representative of **India**, having described the Monopolies and Restrictive Trade Practices (MRTP) Act, 1969, and its main objectives, said that as from 1991 India had embarked on a new industrial policy of liberalization, globalization and deregulation, with the emphasis on exports and higher productivity. With the growing complexity of industrial structures and the need to achieve economies of scale to ensure higher productivity and competitive advantage in the international market, the main thrust of industrial policy was the control and regulation of the monopolistic, restrictive and unfair trade practices, making it necessary for monopoly houses to obtain prior approval of the Government for the establishment or expansion of firms, and for mergers. As a result, the restrictions under the MRTP Act on investment decisions had been abolished.

12. As a result of the new industrial policy, the country's exports had grown, the balance-of-payments position had improved and adequate foreign-exchange reserves had been created. However, the policy of liberalization and globalization had also resulted in a growing number of mergers, takeovers and technical collaborations, heavily increasing the work of the Commission. The Commission also addressed issues arising out of unfair and deceptive terms and conditions offered to the public. In addition, the Consumer Protection Act, 1986, was also aimed at protecting the interests of consumers against deficient goods or services, or unfair trade practices. A three-tier quasi-judicial Consumer Disputes Redressal Mechanism had been established under this Act to promote and protect various rights of the consumer.

13. The representative of the **Russian Federation** observed that the thirteenth session of the Intergovernmental Group was particularly important as it was taking place immediately after the conclusion of the Uruguay Round, which had resulted in new areas of trade liberalization such as services, foreign investment (TRIMS) and intellectual property rights (TRIPS). However, without competition rules at the enterprise level, these gains could be lost. Hence, the importance of the work of UNCTAD, in particular work on devising competition rules at the multilateral level.

14. In the Russian Federation, market economy, demonopolization and competition had taken the prime place. A special governmental body, the Antimonopoly Committee, had been established with the very important task of promoting the creation of a market environment in the Russian Federation. In the first half of 1994 alone, it had dealt with 1,872 cases. For well-known historical reasons, the Committee was working in difficult circumstances. The economy was highly concentrated, and every effort was being made to ensure that enterprises would not abuse their dominant position of market power.

Measures were also being taken with respect to competition in foreign trade relations. The scope and complexity of demonopolization called for highly qualified legislators. The Russian competition law was based on internationally accepted standards and rules based on the work done by the Intergovernmental Group. In the preparation of the Russian law, UNCTAD's Model Law had proved very useful. Countries in transition needed to overcome in a very short period of time the consequences of State monopoly. Such countries, and in particular the members of the Commonwealth of Independent States, needed technical assistance in this area. For this purpose, the Russian Federation was proposing that a comprehensive technical assistance programme to the CIS member States be initiated by UNCTAD.

15. The representative of **France** reported on the main aspects of his country's competition policy in the year since the twelfth session of the Intergovernmental Group. Much thought had been devoted to the issue of previously heavily regulated sectors and monopolies in the face of deregulation and privatization efforts. For entities such as electricity and gas, it was necessary to ensure that their activities were in conformity with competition principles, and in particular that such firms would not use their monopoly power in order to subsidize their activities in sectors where they did not have a monopoly, thus distorting competition in such sectors. The Directorate-General on Competition had intensified its efforts to combat anti-competitive behaviour on the part of enterprises; it had devoted a great deal of effort to educational activities at the national level, organizing seminars and workshops with academics, magistrates and lawyers. Finally, reflecting the process of globalization of competition issues, the French Government was organizing a world competition seminar in Paris, scheduled for 29-30 November 1994, in which OECD, UNCTAD, the World Bank and GATT were invited to participate.

16. The representative of the **United States of America** described two important developments in his country's antitrust enforcement legislation: (i) the enactment on 8 October 1994 of the International Antitrust Enforcement Assistance Act of 1994 (this legislation authorized the Attorney-General of the United States and the Federal Trade Commission to provide, in accordance with antitrust mutual assistance agreements, evidence to foreign antitrust authorities on a reciprocal basis); and (ii) the publication in October 1994 by the Department of Justice and the Federal Trade Commission of proposed new Antitrust Enforcement Guidelines for International Operations, which will replace the Department of Justice's 1988 International Guidelines. The proposed new guidelines reflected policy and legal changes that had taken place since 1988.

17. The representative of **China** described the national economic process whereby his country was seeking to achieve a socialist market economy. To this end, China had adopted several legislative measures, among which the adoption, in December 1993, of the Law of the People's Republic of China Against Unfair Competition. The laws had been formulated with a view to safeguarding the healthy development of the socialist market economy by encouraging and protecting fair competition and by protecting the legitimate rights and interests of business operators and consumers. The law had been successfully implemented so far, but China was still at the experimental stage with regard to RBP legislation. There was need to enrich experience in this area and to increase efforts to pass legislation on demonopolization. In this

regard, he hoped UNCTAD would provide the necessary technical assistance. In this respect, he expressed gratitude for the assistance given so far, in particular for the national workshop in Shanghai and Senzhen, in March 1994.

18. The representative of **Canada** stated that Canada's competition authority had improved its management procedures and enforcement strategies in the light of fiscal constraints. While maintaining its focus on enforcement activities against RBPs, the authority had placed increased emphasis on international cooperation and on intervention in such sectors as telecommunications. Finally, he indicated some types of cases and some sectors on which special emphasis had been placed, described activities undertaken to educate the public about competition issues and referred to new enforcement guidelines which were in preparation.

19. The representative of **The Netherlands** described how his country had adopted per se prohibitions against price-fixing, market-sharing and collusive tendering. Applications for exemptions from these prohibitions had mostly been rejected. A new competition law modelled on the European Union standard was about to be adopted. In the implementation of the new law, efforts would be made to minimize the burden of compliance, and to examine the need for controls of mergers and market concentration in a small open economy. Emphasis was also being placed on the reform of other regulations, since many such regulations adopted for public interest purposes might have collateral anti-competitive effects and might not be adapted to modern conditions.

20. The representative of **Germany** stated that the most convincing way of expressing commitment to the Set of Principles and Rules was to ensure a vigorous enforcement of the national competition laws in the classic areas of competition such as restrictive horizontal agreements, abuse of market power, and anti-competitive mergers and acquisitions. He gave some examples of this in recent German enforcement activities. In view of the increasing international dimension of competition policy and recent trends and changes in the political and competition environment, he stressed the growing need to secure the beneficial functions of competition at the global level. In particular, the liberalization of market access negotiated by GATT parties should be protected from being circumvented by private activities. He felt, however, that globally binding general competition rules and institutions to implement such rules were premature at this time. But the Intergovernmental Group was still the only universal body which could pave the way for, and actively take part in, the forthcoming discussions which might lead to a new international competition order. Germany, therefore, continued to support this initiative.

21. The representative of **Italy** described some aspects of the experience of his country's competition authority in implementing its recently adopted competition law with regard to mergers, abuses and restrictive agreements. The authority's scope of intervention laid emphasis on its advisory role vis-à-vis other Government agencies and Parliament to try and ensure that, whenever possible, the liberalization of regulated markets and privatizations would occur in a competitive context. It also paid particular attention to the enforcement of the antitrust law with regard to regulated monopolies, including the question of how to avoid abuses by such monopolies through cross-subsidization in contiguous markets.

22. The representative of **Jamaica** described the main functions of the Jamaican Fair Trading Commission since its establishment in September 1993. Among others, investigations had been undertaken into restrictive practices in the stock exchange and telecommunications, as well as the water, cement and petroleum industries. Other investigations had concerned bakers, the milk industry and professional bodies. The Commission's advocacy functions were used in the privatization programme, particularly with respect to the National Investment Bank of Jamaica. As part of its broader function, the Commission had launched a public education exercise in the form of video, advisory opinions, pamphlets and press releases. The Commission held seminars for members of parliament and judges. Seminars were also held with the United States Federal Trade Commission and Justice Department, as well as with UNCTAD. Finally, he indicated his willingness to share with other countries his experience in setting up a competition authority.

23. The representative of the **United Kingdom** highlighted the publication by the Office of Fair Trading of a code of practice which set out timetables for inquiries and substantive responses to complaints in different areas of investigatory work. This code was aimed at ensuring rapid decision-making and transparency without sacrificing the quality of work or the commitment to effective competition enforcement.

24. The representative of **Malaysia** referred to the economic growth and the policies adopted towards liberalization and privatization in her country. The globalization of world trade and the increase in foreign investment, including incidences of acquisitions, mergers and take-overs, had influenced the decision to adopt a competition law. She expressed appreciation for the assistance received from the UNCTAD secretariat in the form of seminars and other technical cooperation. Some difficulties were being experienced in drafting the law, and her country was seeking advice from experts in this area.

25. The representative of the **Republic of Korea** said that in the 14 years of existence of his country's Fair Trade Act, the Act had already been amended four times in order to enable it to fulfil its role effectively. Significant recent changes in the domestic and global economic environment made necessary yet another amendment, which was now under consideration by the National Assembly and was likely to be passed by the end of 1994. Under the new amendment it was expected that: (i) the equity investment limit of a company belonging to large business groups would be lowered to 25 per cent of its net assets from the current 40 per cent; (ii) the mandatory notification of international contracts would be abolished; and (iii) remedies to counter violations of the law would be strengthened. He added that the Korean Fair Trade Commission had strengthened its cooperation with the competition policy authorities of other countries as well as with relevant international organizations. In 1993, for example, the Republic of Korea had obtained observer status in the OECD Competition Law and Policy Committee.

26. The representative of **Zambia** stated that, since 1991, his country had undertaken a comprehensive economic reform programme including legal reform to support the private sector. Specifically, the programme was aimed at encouraging competition in the economy and ensuring efficient use of resources. In this process, privatization was being used as one of the means to dismantle monopolistic structures in the economy. The Competition and Fair

Trading Act 1994 provided for the establishment of a Competition Commission, and his country had requested technical assistance from UNCTAD to set up the Commission. Finally, Zambia welcomed the request of the States members of the Preferential Trade Area (PTA) for a Workshop on Competition to be held in Lusaka.

27. The representative of **Spain** outlined the recent activity of the Directorate-General for the Safeguard of Competition for the application of his country's Law for the Protection of Competition of 1989 as well as the activity of the Tribunal for the Safeguard of Competition (Tribunal de Defensa de la Competencia), which had been proposing several legislative measures aimed at creating a more competitive environment in the Spanish market. He also referred to his Government's technical assistance activities in the area of competition policy, in particular in Latin American countries, and he pledged his country's willingness to cooperate with UNCTAD in the area of technical assistance. Finally, he stated that Spain was convinced of the usefulness of the Set of Principles and Rules in future multilateral work in the area of competition.

28. The representative of **Georgia** stated that when his country had decided to adopt a market economy system, competition had become of crucial importance. Thus in 1992, a Decree on Competition had been issued on the model adopted by other economically larger countries. In its application, the Decree had been found wanting in many respects, and so legislation tailored to his country's needs was being drafted with the assistance of the World Bank. In view of the situation he had described, his country wished to request technical assistance from UNCTAD in order to offer training to officials who would enforce the law.

29. The spokeswoman for the **African Group** (Egypt) stated that her Group commended the quality of the documents and studies prepared by the secretariat, in particular the study on competition policy in economic reforms in developing and other countries (TD/B/RBP/96/Rev.1). Members of the Group would communicate their comments to the secretariat at a later stage. While the African Group welcomed the secretariat report on technical cooperation (TD/B/RBP/102), it was concerned at the lack of attention that had been paid to Africa. Technical cooperation was important to the African continent, which lacked the human and financial resources essential for developing the competition policies of its members. The changing and opening up of the international economic system, as a result of the Uruguay Round, increased the need for assistance. Therefore, her Group urged the secretariat to provide technical assistance at country, subregional and regional levels. Individual African countries would also be presenting requests. Finally, she said that the work programme of the Intergovernmental Group and the Third Review Conference should continue to enable countries to improve their ability to curb RBPs, while also taking into account the changing economic and trading environment of the world.

Chapter II

CONSIDERATION OF TEXTS AND PROCEEDINGS AT THE CLOSING PLENARY

A. Consideration of texts

30. At its 6th (closing) plenary meeting, on 28 October 1994, the Intergovernmental Group of Experts on Restrictive Business Practices adopted the draft agreed conclusions on agenda items 3, 4 and 5 circulated in TD/B/RBP/L.65 (for the text of the agreed conclusions, see annex I below).

B. Statement made upon the adoption of the agreed conclusions

31. The representative of **Argentina** expressed his delegation's keen interest in collaborating fully to ensure that the activities developed by UNCTAD, especially the technical cooperation project on RBPs which was now ready for implementation in the Latin American region, were brought into effect. He emphasized the need to seek the funds required for this purpose, whether from regional banks, governments or other bodies. The countries of his region viewed with dismay the impasse currently confronting the solid and serious cooperation effort launched by the secretariat. The development of a "competition culture" in the region, especially in those States that were undertaking or had already completed economic reforms, called for technical assistance programmes aimed at strengthening the role of the competition control bodies.

C. Closing statements

32. The representative of **Cuba** said that his delegation welcomed the agreement reached for the preparation of the Third Review Conference, for which the secretariat was requested to further revise document TD/B/RBP/96/Rev.1. His delegation was particularly interested in subparagraphs 2 (c) and 2 (d) of the agreed conclusions just adopted by the Intergovernmental Group of Experts. With regard to the "enforcement of competition laws and policies in member States" mentioned in subparagraph 2 (c), he pointed out that the Government of the United States of America was still promulgating legal measures against Cuba, such as the Torricelli Act, aimed at putting pressure on independent governments and commercial enterprises to cut short or scale down their economic and trade links with Cuba. The continuation of the economic blockade against Cuba was in total disregard of the recent demand made by the United Nations General Assembly, whereby 102 countries had pronounced themselves against the blockade. The effect of the blockade had been to deprive Cuba of basic medicines and foodstuffs.

33. In connection with the review of selected cases of RBPs which the secretariat was called upon to carry out in order to assess the impact of the finalization of the Uruguay Round (subparagraph 2 (d) of the agreed conclusions), he stated that the adoption of the Torricelli Act had been preceded by more than 10 years of relentless harassment of Cuba, which had prevented his country from developing normal economic and trade relations with the countries and organizations of the international community. The

United States Government had pursued this policy through a complex skein of laws, regulations and procedures aimed at causing the utmost damage to his country.

34. In view of the situation he had described, his delegation considered that it was very important to undertake a qualitative analysis of the overall implications of this policy, including such aspects as the prohibition of trade between Cuba and subsidiaries of United States companies; restrictions on Cuban exports; prohibiting the use by enterprises in third countries of inputs originating in Cuba in their products destined for the North American market; and Cuba's restricted access to the maritime transport market, together with the high costs incurred for such transport by the remoteness of Cuba's export markets.

35. The spokesman for the **European Union** (Germany) expressed appreciation for the multilateral discussions and exchange of views among States on the Set of Principles and Rules, which had proved to be very useful and had served to establish important contacts between experts from interested countries. He expressed the wish to see such consultations pursued further.

36. The representative of the **United States of America** said that, as an employee of the United States Department of Justice and an antitrust expert, he was not in a position to respond to the political statement just made by the representative of Cuba, which had nothing to do with the subject-matter of the Intergovernmental Group of Experts, and he requested that the Permanent Mission of the United States be given leave to include in the report of the Group an appropriate response*.

37. The representative of the **United Kingdom** said that her colleagues in the United Kingdom had commented on the very high standard of the documents prepared by the secretariat and she hoped that it would be possible to maintain this standard in the future. She had been heartened by delegations' responses to the United Kingdom's presentation on market definition, in particular on the part of developing countries and countries in transition. Finally, her country looked forward to the continuation of the Intergovernmental Group of Experts as an essential forum for the promotion of high standards of competition throughout the world.

38. The representative of **Poland** said that the current session of the Group of Experts had provided an important occasion for her country, as well as for other countries in transition, to share experiences and to discuss issues which were very difficult for them in the early stages. She thanked the representatives of the United Kingdom and France for their very interesting presentations and expressed the hope that next year the two subjects covered would be pursued.

39. In his concluding remarks, the **Chairman** said that the work done at the current session of the Intergovernmental Group of Experts represented a breakthrough. The Group had dealt with issues that included the role of competition policy in economic reforms; it had made progress on the commentary to the model law; it had maintained the work programme on technical assistance

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* For the United States response, see section D below.

and moved towards greater transparency in this area; it had authorized the secretariat to commence important work which would be of great benefit to all parties in the future. Competition policy was an evolving subject: for some issues, all countries were still at the identification stage; for other issues, they were at the policy design stage. Most countries were at the implementation stage for many issues. In the multilateral consultations, the participants learned from one another, not only from the success stories but also from the candid discussion of policy mistakes, all of which could lead to improvements in identification, design and implementation.

D. Response by the United States of America to the closing statement made by the representative of Cuba

40. The United States of America maintains a comprehensive economic embargo against Cuba because the Cuban Government continues to deny its citizens basic human rights and a voice in choosing their Government. United States companies and their foreign subsidiaries are subject to the provisions of the embargo. The United States, as any other nation, is free to trade or not trade with any country it chooses, and does not prevent other nations from trading with Cuba. The United States believes that the representative of Cuba's comments were inappropriate to this forum.

Chapter III

ORGANIZATIONAL MATTERS

A. Opening of the session

41. The thirteenth session of the Intergovernmental Group of Experts on Restrictive Business Practices was opened on 24 October 1994 by Mr. Carlos Fortin, Officer-in-Charge of UNCTAD.

B. Election of officers

(Agenda item 1)

42. At the 1st plenary meeting of its thirteenth session, on 24 October 1994, the Intergovernmental Group of Experts elected the following Bureau:

Chairman: Mr. Donald Partridge (Canada)

Vice-Chairmen: Mr. H. Wangemann (Germany)
Mr. B. Alipour (Islamic Republic of Iran)
Mr. P. Paulwell (Jamaica)
Mr. T. Teodorovitch (Russian Federation)
Mr. C. Mbegabolawe (Zimbabwe)

Rapporteur: Mr. Gomi T. Senadhira (Sri Lanka)

C. Adoption of the agenda and organization of work

(Agenda item 2)

43. Also at its 1st plenary meeting, the Intergovernmental Group adopted its provisional agenda (TD/B/RBP/99) as follows:

1. Election of officers

2. Adoption of the agenda and organization of work

3. Studies related to the provisions of the Set and consultations on restrictive business practices

4. The model law or laws for the control of restrictive business practices, and the Handbook on Restrictive Business Practices Competition Legislation

5. Work programme on restrictive business practices including technical assistance, advisory and training programmes on restrictive business practices, and preparation of the Third Review Conference

6. Provisional agenda for the fourteenth session of the Intergovernmental Group of Experts

7. Other business

8. Adoption of the report of the Intergovernmental Group of Experts.

D. Provisional agenda for the fourteenth session of the Intergovernmental Group of Experts

(Agenda item 6)

44. At its 6th (closing) meeting, on 28 October 1994, the Intergovernmental Group of Experts approved the draft provisional agenda for its fourteenth session as circulated in TD/B/RBP/L.66. (For the provisional agenda, see annex II.)

E. Adoption of the report of the Intergovernmental Group of Experts

(Agenda item 8)

45. At the same meeting, the Intergovernmental Group of Experts adopted the draft report on its thirteenth session (TD/B/RBP/L.64 and Add.1-2) and authorized the Rapporteur to complete the final report as appropriate.

Annex I

AGREED CONCLUSIONS ADOPTED BY THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES AT ITS THIRTEENTH SESSION

The Intergovernmental Group of Experts on Restrictive Business Practices, having held its thirteenth session from 24 to 28 October 1994, agrees to the following conclusions:

1. The fourteenth session of the Intergovernmental Group of Experts will be devoted to the preparations for the Third United Nations Conference to Review all Aspects of the Set (the Third Review Conference) in November 1995.

2. In preparation for the Third Review Conference, the UNCTAD secretariat is requested:

(a) To further revise the study on "The role of competition policy in economic reforms in developing and other countries" (TD/B/RBP/96/Rev.1), taking into account the comments made during the thirteenth session and comments to be received from member States before 31 January 1995. The revised study should be made available in time for the Third Review Conference;

(b) To compile the drafting suggestions to be received from member States before 30 November 1994 on the Model Law in a conference-room paper to be submitted to the fourteenth session of the Intergovernmental Group of Experts, with a view to further revising the commentary to the Model Law;

(c) To prepare an annotated outline of a study on the scope, coverage and enforcement of competition laws and policies in member States and an analysis of the provisions of the Uruguay Round Agreements relevant to competition policy, including their implications for developing and other countries;

(d) In order to assess the impact of the finalization of the Uruguay Round, in particular the impact on competition policy, to undertake a review of selected cases of RBPs that have an effect in more than one country, in particular developing countries and countries in transition;

(e) To examine the feasibility of developing a bibliography of relevant materials dealing with RBP issues and the implementation of an appropriate database facility relating to decisions by competition authorities and courts, and to present their preliminary findings relative to each proposal in the course of the fourteenth session of the Intergovernmental Group of Experts.

3. The Intergovernmental Group of Experts:

(a) Calls upon intergovernmental organizations and financing programmes - as well as member States through voluntary financial and other contributions - to provide the appropriate resources for technical assistance to all regions, in particular Africa and other regions needing such assistance; and to inform the UNCTAD secretariat about programmes under which applications for technical assistance could be made;

(b) Requests the UNCTAD secretariat to continue to provide, upon request and within available resources, technical assistance, advisory and training services in the area of competition policy to developing countries and to countries in transition, and to report on its activities so as to enable the Third Review Conference to evaluate these activities;

(c) Calls upon intergovernmental organizations to coordinate and cooperate in the area of competition policy with a view to avoiding unnecessary duplication of work and to maximize results within existing limited resources.

4. The Intergovernmental Group of Experts held multilateral consultations on two issues concerning the control of restrictive business practices. These discussions centred on the subjects of (a) how to define relevant markets in competition law enforcement: the main factors to be taken into consideration in practice; and (b) control of horizontal agreements under competition laws. Consultations held under this agenda item should take place again at future sessions of the Intergovernmental Group of Experts.

Annex II

PROVISIONAL AGENDA FOR THE FOURTEENTH SESSION OF THE INTERGOVERNMENTAL GROUP OF EXPERTS ON RESTRICTIVE BUSINESS PRACTICES*

1. Election of officers

2. Adoption of the agenda and organization of work

3. Preparations for the Third United Nations Conference to Review all Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices:

   (a) Review of 15 years of application and implementation of the Set;

   (b) Formulation of proposals for the improvement and further development of the Set of Principles and Rules;

   (c) Provisional agenda for the Conference;

   (d) Provisional rules of procedures for the Conference

4. Other business

5. Adoption of the report of the Intergovernmental Group of Experts.

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* As approved by the Group of Experts at its 6th (closing) meeting, on 28 October 1994 (cf. chap. III, section D).

Annex III

ATTENDANCE*

1. The following States members of UNCTAD were represented at the session:

Algeria
Angola
Argentina
Austria
Bangladesh
Belize
Bolivia
Brazil
Canada
Chile
China
Colombia
Costa Rica
Côte d'Ivoire
Cuba
Democratic People's Republic of Korea
Denmark
Dominican Republic
Ecuador
Egypt
Ethiopia
Finland
France
Georgia
Germany
Ghana
Hungary
India
Indonesia
Iran (Islamic Republic of)
Italy
Jamaica
Japan
Kenya
Lebanon
Libyan Arab Jamahiriya
Madagascar
Malaysia
Malta
Mexico
Mongolia
Netherlands
Norway
Pakistan
Paraguay
Peru
Philippines
Poland
Portugal
Republic of Korea
Romania
Russian Federation
Saudi Arabia
Slovakia
South Africa
Spain
Sri Lanka
Sudan
Sweden
Switzerland
Thailand
Tunisia
Turkey
United Kingdom of Great Britain and Northern Ireland
United Republic of Tanzania
United States of America
Venezuela
Zambia

2. The European Community was also represented.

3. The following specialized and related agencies were represented at the session:

World Bank
International Monetary Fund
United Nations Industrial Development Organization

The General Agreement on Tariffs and Trade was also represented at the session.

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* For the list of participants, see TD/B/RBP/INF.33.

4. The following intergovernmental organizations were represented at the session:

African, Caribbean and Pacific Group of States
Organisation for Economic Cooperation and Development
Organization of African Unity

5. The following non-governmental organizations were represented at the session:

General Category

International Chamber of Commerce
World Federation of United Nations Associations

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Printed at United Nations, Geneva
GE.95-50193—February 1995—3,200

United Nations publ